

SYLVIA QUAST  
Regional Counsel  
United States Environmental Protection Agency, Region IX



CATHERINE SCHLUTER  
Assistant Regional Counsel  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3857  
[schluter.catherine@epa.gov](mailto:schluter.catherine@epa.gov)

Attorneys for Complainant

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CALIFORNIA 94105**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-09-2023-0046</b>
	)	
<b>West Wind Logistics Inc.</b>	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER PURSUANT TO</b>
	)	<b>40 C.F.R. §§ 22.13 AND 22.18</b>
<b>Respondent.</b>	)	
_____	)	

**I. CONSENT AGREEMENT**

The United States Environmental Protection Agency, Region IX (“EPA”), and West Wind Logistics Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

**A. AUTHORITY, JURISDICTION, AND PARTIES**

1. This is a civil administrative action brought under Section 113(d) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(d).
2. Complainant is the Director of the Enforcement and Compliance Assurance Division,

EPA Region IX, who has been duly delegated the authority to initiate and settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is a for hire trucking firm that owns and/or operates heavy duty diesel-fueled vehicles registered to be driven on public highways in California, among other states.

4. Pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), EPA and the United States Department of Justice jointly determined that this matter, which involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment.

5. The regulations at issue in this action have been incorporated into the federally approved and federally enforceable California State Implementation Plan (“SIP”). In accordance with the notice requirements of Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), EPA issued a Finding and Notice of Violation (“NOV”) to West Wind Logistics on July 11, 2022, and provided a copy of the NOV to the California Air Resources Board (“CARB”). The NOV provided notice to the Respondent and to CARB that EPA found that the Respondent committed alleged violations described in Section I.C of this CAFO and provided the Respondent an opportunity to confer with EPA.

#### B. STATUTORY AND REGULATORY AUTHORITY

6. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region (“AQCR”) in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for California AQCRs are listed at 40 C.F.R. § 81.305.

7. There are multiple AQCRs designated as nonattainment for fine particulate matter

(PM<sub>2.5</sub>) and ozone in California. See 40 C.F.R. § 81.305.

8. Section 110(a) of the Act, 42 U.S.C. § 7410(a), requires that all states adopt SIPs that provide for the implementation, maintenance, and enforcement of primary and secondary air quality standards.

9. A person's failure to comply with any approved regulatory provision of a SIP renders the person in violation of an applicable implementation plan and subject to enforcement under Section 113(a)(1) of the Act. 42 U.S.C. § 7413(a)(1).

**Title 13, Section 2025 of the California Code of Regulations: Truck and Bus Regulation**

10. In accordance with Resolution 10-44 (December 2010), the California Air Resources Board ("CARB") adopted amendments to the "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles," codified at title 13, Section 2025 of the California Code of Regulations (the "Truck and Bus Regulation" or "TBR").

11. The EPA incorporated the TBR as submitted by the CARB into the California SIP, effective May 4, 2012. See 77 Fed. Reg. 20308 (April 4, 2012).

12. As stated in Section 2025(a) of the TBR, the purpose of the regulation is "to reduce emissions of diesel particulate matter (PM), oxides of nitrogen (NO<sub>x</sub>) and other criteria pollutants from in-use diesel-fueled vehicles."

13. Pursuant to Section 2025(b) of the TBR, the TBR "applies to any person, business, ... that owns or operates, leases, or rents, affected vehicles that operate in California. Affected vehicles are those that operate on diesel-fuel, dual-fuel, or alternative diesel-fuel that are registered to be driven on public highways, were originally designed to be driven on public highways whether or not they are registered, ... and have a gross vehicle weight rating

(GVWR) greater than 14,000 pounds.”

14. Section 2025(d)(17) of the TBR defines “Diesel Particulate Filter” (“DPF”) as “an emission control technology that reduces diesel particulate matter emissions by directing the exhaust through a filter that physically captures particles but permits gases to flow through....”

15. Section 2025(d)(18) of the TBR defines “Diesel Particulate Matter (PM)” as “the particles found in the exhaust of diesel-fueled compression ignition engines....”

16. Section 2025(d)(28) of the TBR defines “Fleet” as “one or more vehicles, owned by a person, business, or government agency, traveling in California and subject to this regulation....”

17. Section 2025(d)(29) of the TBR defines “Fleet Owner” as “either the person registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles (DMV), or its equivalent in another state, province, or country; as evidenced on the vehicle registration document carried in the vehicle.”

18. Section 2025(d)(42) of the TBR defines “Motor Carrier” as “the same as defined in California Vehicle Code Section 408 for fleets other than those that are comprised entirely of school buses....”

19. Section 408 of the California Vehicle Code defines “Motor Carrier” as “the registered owner, lessee, licensee, or bailee of any vehicle set forth in Section 34500, who operates or directs the operation of any such vehicle on either a for-hire or not-for-hire basis.”

20. Section 2025(d)(47) of the TBR defines “Person” as “an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.”

21. Section 2025(x)(2) of the TBR provides that “[a]ny in-state or out-of-state motor carrier, California broker, or any California resident who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of section 2025(s)(4).”

22. Section 2025(x)(3) of the TBR provides that “[c]ompliance may be accomplished by keeping at the business location, a copy of the Certificate of Reported Compliance with the In-Use On-Road Diesel Vehicle Regulation for each fleet, or in the vehicle.”

**Title 13, Section 2477 of the California Code of Regulations: Transport Refrigeration  
Units Regulation**

23. In accordance with Resolution 10-39 (November 2010), CARB adopted the “Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate,” codified at title 13, Section 2477 of the California Code of Regulations (the “TRU Regulation”).

24. The EPA incorporated the TRU Regulation as submitted by the CARB into the California SIP, effective July 18, 2016. See 81 Fed. Reg. 39424 (June 16, 2016).

25. In accordance with Resolution 11-35 (October 2011), CARB amended the TRU Regulation, codified at title 13, Section 2477 of the California Code of Regulations (the “Amended TRU Regulation”).

26. The EPA incorporated the Amended TRU Regulation as submitted by the CARB into the California SIP, effective June 18, 2018. See 83 Fed. Reg. 23232 (May 18, 2018).

27. Pursuant to Section 2477(b) of the TRU Regulation, and Section 2477.2(a) of the Amended TRU Regulation, the TRU Regulation and Amended TRU Regulation apply to

owners and operators of diesel-fueled TRUs and TRU gen sets that operate in California, regardless of where the vehicle is based.

28. Section 2477(d)(52) of the TRU Regulation defines “Owner” as “any person that legally holds the title (or its equivalent) showing ownership of a TRU or TRU gen set, excluding [listed exemptions].” See also Section 2477.4(70) of the Amended TRU Regulation.

29. Section 2477(d)(51) of the TRU Regulation defines “Operator” as “any person, party or entity that operates a TRU or TRU gen set for the purposes of transporting perishable goods, excluding [listed exemptions].” See also Section 2477.4(68) of the Amended TRU Regulation.

30. Section 2477(d)(53) of the TRU Regulation defines “Owner/Operator” as “a requirement applies to the owner and/or operator of a TRU or TRU gen set, as determined by agreement or contract between the parties if the two are separate business entities.” See also Section 2477.4(71) of the Amended TRU Regulation.

31. Section 2477(d)(65) of the TRU Regulation defines “Transport Refrigeration Unit (TRU)” as “refrigeration systems powered by integral internal combustion engines designed to control the environment of temperature sensitive products that are transported in trucks and refrigerated trailers. TRUs may be capable of both cooling and heating.” See also Section 2477.4(91) of the Amended TRU Regulation.

32. Section 2477(d)(66) of the TRU Regulation defines “TRU Generator Set (TRU gen set)” as a “generator set that is designed and used to provide electric power to electrically driven refrigeration units of any kind. This includes, but is not limited to, gen sets that provide electricity to electrically powered refrigeration systems for semi-trailer vans and shipping containers.” See also Section 2477.4(93) of the Amended TRU Regulation.

33. Pursuant to Section 2477(e)(1)(A) and (B) of the TRU Regulation, and Section 2477.5(a) and (b) of the Amended TRU Regulation, no owner or owner/operator shall operate a TRU or TRU gen set in California with a rated brake horsepower greater than or equal to 25 horsepower unless it meets the following in-use emission category performance standards and in-use compliance dates:

- A TRU or TRU gen set with a model year of 2009 must meet Ultra Low Emission TRU category performance standard (“ULETRU”) by December 31, 2016.
- A TRU or TRU gen set with a model year of 2010 must meet ULETRU by December 31, 2017.
- A TRU or TRU gen set with a model year of 2011 must meet ULETRU by December 31, 2018.
- A TRU or TRU gen set with a model year of 2012 must meet ULETRU by December 31, 2019.
- A TRU or TRU gen set with a model year of 2013 must meet ULETRU by December 31, 2020.

### C. ALLEGATIONS

34. At all times relevant to this CAFO, West Wind Logistics was a “Person” as that term is defined under Section 2025(d)(47) of the TBR.

35. At all times relevant to this CAFO, West Wind Logistics was a person or business that owned and/or operated diesel-fueled vehicles that have a GVWR greater than 14,000 pounds and are registered to be driven on public highways in California, among other states.

36. At all times relevant to this CAFO, the TBR applied to Respondent.

37. At all times relevant to this CAFO, West Wind Logistics was a “Fleet Owner” of a

“Fleet” of vehicles as those terms are defined under Section 2025(d)(28) and (29), respectively, of the TBR.

38. At all times relevant to this CAFO, West Wind Logistics was a “Motor Carrier” as that term is defined under Section 2025(d)(42) of the TBR.

39. Within the period of January 1, 2017, to April 22, 2021, Respondent hired or dispatched two (2) vehicles subject to the TBR and failed to verify that each hired or dispatched vehicle was in compliance with the TBR.

40. Within the period of January 1, 2017, to April 22, 2021, Respondent violated Section 2025(x)(2) of the TBR by failing to verify that each of the two (2) vehicles subject to the TBR that Respondent hired or dispatched was in compliance with the TBR.

41. At all times relevant to this CAFO, West Wind Logistics was an “Owner” and/or “Operator” and/or “Owner/Operator” as those terms are defined under Section 2477(d)(52), (51) and (53), respectively, of the TRU Regulation, and Section 2477.4(a)(70), (68) and (71), respectively, of the Amended TRU Regulation.

42. At all times relevant to this CAFO, the TRU Regulation or Amended TRU Regulation applied to Respondent.

43. Respondent owned or operated five (5) TRUs or TRU gen sets with rated brake horsepower greater than or equal to 25 horsepower (“ $\geq 25$  HP”) that a) had a model year of 2009; b) operated in California within the period of January 1, 2019, to April 22, 2021; and c) failed to meet ULETRU by December 31, 2016.

44. Respondent owned or operated three (3) TRUs or TRU gen sets with  $\geq 25$  HP that a) had a model year of 2010; b) operated in California within the period of January 1, 2020, to April 22, 2021; and c) failed to meet ULETRU by December 31, 2017.

45. Respondent owned or operated six (6) TRUs or TRU gen sets with  $\geq 25$  HP that a) had a model year of 2011; b) operated in California within the period of January 1, 2019, to April 22, 2021; and c) failed to meet ULETRU by December 31, 2018.

46. Respondent owned or operated two (2) TRUs or TRU gen sets with  $\geq 25$  HP that a) had a model year of 2012; b) operated in California within the period of January 1, 2020, to April 22, 2021; and c) failed to meet ULETRU by December 31, 2019.

47. Respondent owned or operated two (2) TRUs or TRU gen sets with  $\geq 25$  HP that a) had a model year of 2013; b) operated in California within the period of January 1, 2021, and April 22, 2021; and c) failed to meet ULETRU by December 31, 2020.

48. Respondent violated Section 2477(e)(1)(A) and (B) of the TRU Regulation or Section 2477.5(a) and (b) of the Amended TRU Regulation by failing to timely meet ULETRU in eighteen (18) TRUs or TRU gen sets identified in the preceding five (5) paragraphs.

#### D. RESPONDENT'S ADMISSIONS

49. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter alleged in this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations set forth in Section I.C of this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

#### E. CIVIL ADMINISTRATIVE PENALTY

50. Respondent agrees to the assessment of a penalty in the amount of SIXTY-THREE THOUSAND DOLLARS (\$63,000) as final settlement of the civil claims against Respondent

arising under the Act as alleged in Section I.C of this CAFO.

51. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date in this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

- a. Respondent may pay online through the Department of the Treasury website at [www.pay.gov](http://www.pay.gov). In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments – Cincinnati Finance Center, and complete the SFO Form Number 1.1.
- b. Respondent may also pay the civil penalty using any method, or combination of methods, provided on the following website:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>

52. If any clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
[R9HearingClerk@epa.gov](mailto:R9HearingClerk@epa.gov)

Janice Chan  
Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency, Region IX  
[chan.janice@epa.gov](mailto:chan.janice@epa.gov)

53. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

54. If Respondent fails to pay the assessed civil administrative penalty as specified in Paragraph 34, then Respondent shall pay to EPA the stipulated penalty of ONE THOUSAND DOLLARS (\$1,000.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 35 may lead to any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
- b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13

interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 35. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### F. CERTIFICATION OF COMPLIANCE

55. In executing this CAFO, Respondent certifies that, to its knowledge, it is currently in compliance with the TBR Regulation and Amended TRU Regulation.

#### G. RETENTION OF RIGHTS

56. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation,

rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of the CAFO.

57. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

#### H. ATTORNEY'S FEES AND COSTS

58. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this Proceeding.

#### I. EFFECTIVE DATE

59. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

#### J. BINDING EFFECT

60. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

61. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, WEST WIND LOGISTICS INC.:

05/02/23

DATE



Name: *PETER DRIEDUC*

Title: *PRESIDENT*

FOR COMPLAINANT, EPA REGION IX:

\_\_\_\_\_

DATE

AMY MILLER-Digitally signed by AMY  
MILLER-BOWEN  
Date: 2023.05.18  
11:17:46 -07'00'  
BOWEN

Amy C. Miller-Bowen  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX

## II. FINAL ORDER

Complainant and Respondent, West Wind Logistics Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2023-0046) be entered, and that Respondent shall pay a civil administrative penalty in the amount of SIXTY-THREE THOUSAND DOLLARS (\$63,000) and comply with the terms and conditions set forth in the Consent Agreement. This Consent Agreement and Final Order shall become effective upon filing.

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Beatrice Wong                      Date  
Regional Judicial Officer  
U.S. EPA, Region IX

